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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/635,249	08/06/2003	Donald C. Roe	8556C	9458

27752 7590 06/24/2005

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EXAMINER

BOGART, MICHAEL G

ART UNIT PAPER NUMBER

3761

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.		Applicant(s)	
	10/635,249		ROE ET AL.	
	Examiner		Art Unit	
	Michael G. Bogart		3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>11/03 & 2/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-31 of U.S. Patent No. 6,642,427 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the issued patent claims every material element of every claim of the instant invention. There are only minor variations in how some limitations are described. For example, in claim 1 of the

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instant invention, it claims the impermeable and impermeable layers are disposed in a face-to-face arrangement. The issued patent, in claim 1, describes this element as a temperature change element between these layers. Giving the context of the use of "layers" in the issued claim, it is obvious that a face-to face-relationship is intended, as opposed to perpendicular, etc.

Claim Rejections - 35 USC § 102

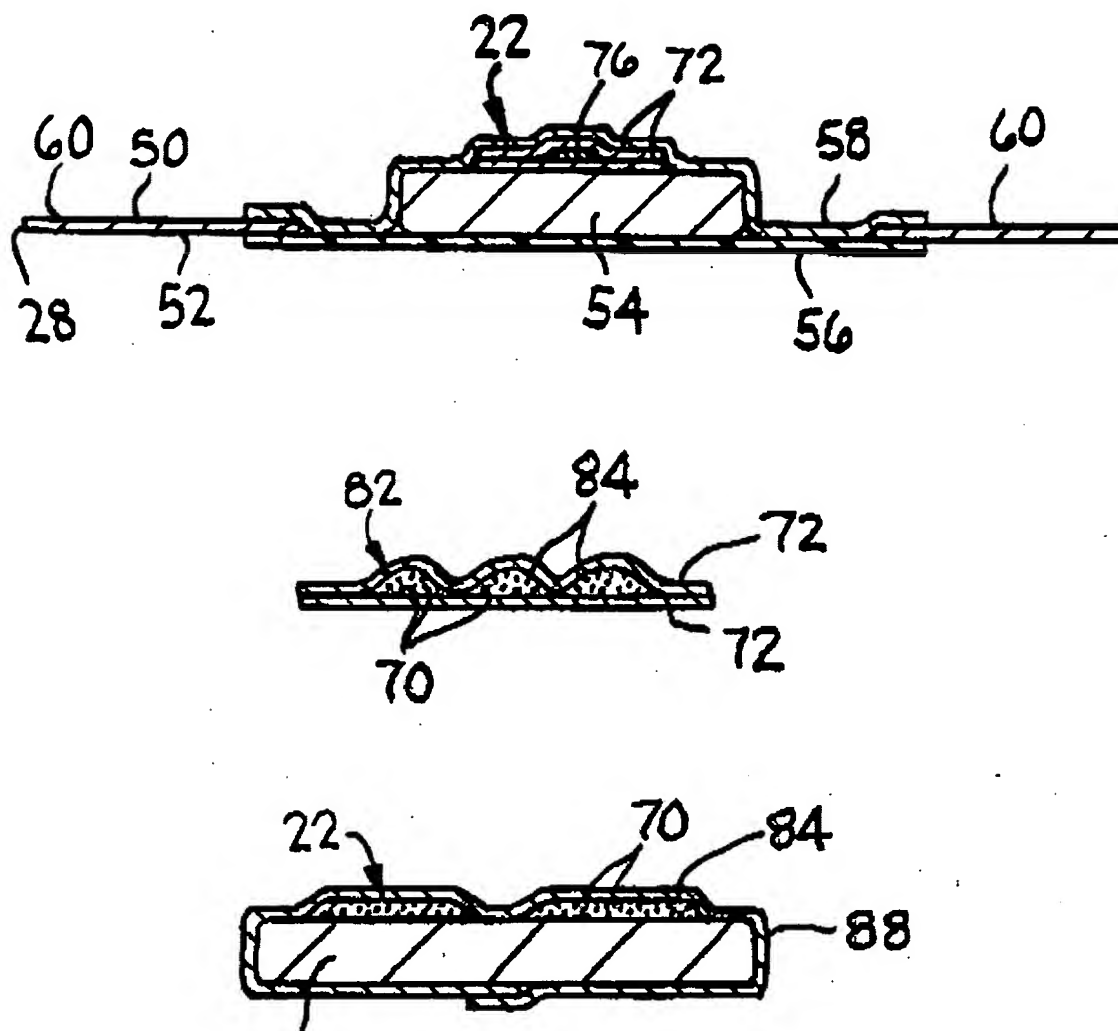
The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 4-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Brunner *et al.* (US 5,681,298 A).

Regarding claim 1, Brunner *et al.* teach a wearable article (20) worn about the lower torso of a wearer, the wearable article (20) comprising a temperature change element (22) including a permeable layer (lower layer (72)), an impermeable layer (upper layer (72)) disposed in a face-to-face arrangement with the permeable layer (72), and a temperature change substance (70) interposed between the permeable layer (72) and the impermeable layer (72), wherein urine deposited onto the temperature change element (22) can penetrate through the upper permeable layer (72) in a z direction to the lower impermeable layer (72) and wherein the impermeable layer (72) prevents urine from passing completely through the temperature change element (22) in the z direction and supports the movement of urine in an x-y plane to wet the temperature change substance (70)(col. 8, lines 10-17)(see figures 1, 7 and 8, below).



Regarding claim 7, Brunner *et al.* teach 7 disposable diaper (20) having a longitudinal axis, a first waist region (24) , a second waist region (26), and a crotch region interposed therebetween, the disposable diaper (20) comprising:

a backsheet (56);

a topsheet (58) joined to the backsheet (56), the topsheet (58) having a body-facing surface;

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an absorbent core (54) disposed intermediate the backsheet (56) and the topsheet (58);
and

a temperature change element (22) disposed on the topsheet (58), the temperature change element (22) including an upper permeable layer (72), a lower impermeable layer (72) disposed opposite the permeable layer (72), and a temperature change substance (70) interposed therebetween, wherein urine deposited onto the temperature change element (22) can penetrate through the upper permeable layer (72) in a z direction to the lower impermeable layer (72) and wherein the lower impermeable layer (72) prevents urine from passing completely through the temperature change element (22) in the z direction and supports the movement of urine in an x-y plane to wet the temperature change substance (70)(figure 1).

Regarding claims 2 and 8, Brunner *et al.* teach that the temperature change substance (70) includes an endothermic salt (col. 6, lines 27-43).

Regarding claim 4, Brunner *et al.* teach that the temperature change element (22) comprises a multiplicity of compartments and the temperature change substance (70) is disposed in each of the compartments (figures 7 and 8).

Regarding claim 5, Brunner *et al.* teach that the temperature change element (22) comprises a multiplicity of fluid channels disposed parallel and between the compartments (figures 7 and 8).

Regarding claim 6, Brunner *et al.* teach that the upper permeable layer (72) faces the body of a wearer (figure 1).


Conclusion

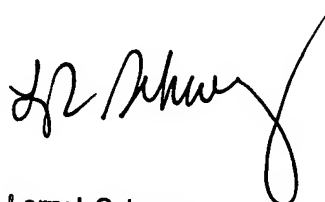
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Larry Schwartz may be reached at phone number (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michael Bogart
21 June 2005


Larry I. Schwartz
Supervisory Patent Examiner
Group 3700